

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----	X	
INNOVATION VENTURES, LLC, et al.,	:	
	:	
Plaintiffs,	:	12 Civ. 5354 (KAM)
	:	
-against-	:	DECLARATION OF
	:	GEOFFREY POTTER
	:	
ULTIMATE ONE DISTRIBUTING CORP., et al.,	:	
	:	
Defendants.	:	
	:	
-----	X	

GEOFFREY POTTER, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a partner of the law firm Patterson Belknap Webb & Tyler LLP, attorneys for Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC, and International IP Holdings, LLC. I make this declaration on personal knowledge in further support of Plaintiffs’ Reply Memorandum of Law in Further Support of Plaintiffs’ Motion for Preliminary Injunction against Joseph Shayota and Tradeway International, Inc. d/b/a Baja Exporting, and to place certain facts and documents before this Court.
2. On November 28, 2012, I deposed Justin Shayota, a defendant in this action, under oath. A true and correct copy of the transcript of that deposition is attached hereto as **Exhibit 1** (“Shayota Dep.”). True and correct copies of all exhibits referenced in that deposition are attached hereto as **Exhibit 2**.

Justin Shayota's Testimony

3. Justin Shayota testified in detail about the daily manufacturing operations of the counterfeit 5-hour ENERGY®: teams of undocumented workers labored eighteen hours a day in the unmarked warehouse he rented at 2235 Avenida Costa Este, San Diego, California to manufacture counterfeit 5-hour ENERGY®. (*See e.g.*, Shayota Dep. at 36:22-24; 108:7-100:3; 110:19-23; 222:20-224: 14; 225:10-226:2.) Specifically, they applied counterfeit 5-hour ENERGY® labels by hand to millions of sealed blank bottles that arrived in used boxes (*id.* at 77:5-11; 117:19-119:7; 182:22-184:4); shrink wrapped the labels (*id.* at 77:12-17); printed purported lot numbers and expiration dates on the bottom of the bottles (*id.* at 80:16-19); assembled and glued counterfeit point-of-purchase display boxes (*id.* at 97:18-98:23); packed the counterfeit point-of-purchase display boxes and corrugated master cases (*id.* at 53:22-54:7); printed case numbers on the corrugated master cases (*id.* at 90:13-91:6); and shrink wrapped the pallets for shipping (*id.* at 101:10-17).

4. The supplies and equipment purchased for this operation included a specialized industrial steamer to shrink wrap the labels onto the bottles (*id.* at 77:2-4); a conveyor belt to bring the bottles into the steamer (*id.* at 77:24-78:2); an air compressor to dry the bottles that came out of the steamer (*id.* at 88:10-15); a specialized industrial printing machine to print lot numbers and expiration dates on the bottom of the bottles (*id.* at 80:13-19); a second conveyor belt to align the bottom of the bottles with the printing machine (*id.* at 81:22-82:7); a second specialized industrial printing machine to print case numbers on the outside of corrugated master cases (*id.* at 90:9-21); a third conveyor belt to feed the corrugated master cases into the printer (*id.* at 97:4-7); a second compressor to “shoot the ink out” onto the corrugated master cases (*id.* at 96:21-97-97:3); a forklift (*id.* at 95:8-11); dozens of glue guns to seal the counterfeit point-of-

purchase display boxes (*id.* at 97:18-4); and glue (*id.* at 99:2-5). In fact, the scale of this counterfeiting operation was so large that they needed more than half a *ton* of glue. (*Id.* at 219:23-220:20.)

5. Justin Shayota also testified that Joseph Shayota received cash proceeds from sales of counterfeit 5-hour ENERGY®. (*Id.* at 43:12-15 (“Either gave [cash] to Wally, spend it on payroll, or give it to Joe”); 168:20-169:5.) Justin Shayota further testified that once payroll and other expenses were paid, he delivered the remaining cash proceeds—in varying amounts—to Joseph Shayota. (*Id.* at 136:14-137:25.)

6. While Justin Shayota operated the counterfeiting factory, he lived (and continues to live) rent-free in a home owned by Adriana Shayota, Joseph Shayota’s wife. (*Id.* at 20:6-10; 56:5-9; 100:11-13.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29, 2012



Geoffrey Potter